IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3530 OF 2005

Narpatsingh Ranchodbhai & Ors. ...Applicants
vs.
State of Gujrat through
CBI-Special Crime Branch,
Mumbai and another ...Respondents

Mr.Madhav J. Jamdar for the Applicants
Mr.B.A.Desai, Addl.Solicitor General with Mr.H.V.Mehta and
Mr.Ejaz Khan, Senior P.P. for Respondent No.1

CORAM: A.S.OKA,J.
DATE : JUNE 21,2005.

P.C.:

1. Heard Counsel appearing for the parties. This Application for bail is filed by the accused Nos.13 to 18. The accused are being tried for various offences by the learned Special Judge, Greater Mumbai at Mazgaon, Mumbai. The Applicants are accused in a case known as 'Bilkis Banu Case' which has been transferred by the Apex Court from the concerned Sessions Court in the State of Gujrat to the Court of the learned Special Judge at Mumbai. The earlier application made by the Applicants before the learned Additional Sessions Judge, Panchmahals, At Camp Dahod, Gujrat was rejected by order dated 20th May 2004. The second bail application was made by the Applicants before the learned Special Judge. The learned Special Judge rejected the same by order dated 8th December 2004. The third application made by the Applicants has been rejected by the learned Special Judge by order dated 20th April 2005.

2. The case of the prosecution is that one Smt. Bilkis Banu along with her parents was at the relevant time residing at Singwad, Randhikpur. As there was a threat to their life, Bilkis Banu along with her three and half year old daughter and 15 others left the village and spent night at Kuwajar village. On 3rd Marach 2002,when the said Bilkis Banu and 16 others reached the Chapparwad village about 25 to 30 people came and assaulted the said lady and her family. The allegation is that the three and half year old daughter of the said lady died as a result of assault and 13 other persons were killed. The allegation of the prosecution is that a group of persons raped the said Bilkis Banu. The case of the prosecution is that the assailants left the place under the impression that the said Bilkis Banu was dead. The case is that the said Bilkis Banu was lying unconscious and on 4th March 2002 she regained consciousness and she came on road where she saw a jeep and a person in uniform standing on Kutcha Road. She sought help and she was taken to the Police Station.

4. The Applicants were attached to the Limbkheda Police Station/Godhra Police Station at the relevant time. The allegation against the Applicants is that the F.I.R. was not recorded as per the say of the complainant-Bilkis Banu. The inquest Panchnama was not drawn as per the procedure. The further case of the prosecution is that the Applicants-accused caused evidence to disappear by burying of the dead bodies.

The allegation against the Applicants is of commission of offences punishable under Sections 143, 147, 148, 302, 376, 201, 217, 218, 120 read with Section 34 of the Indian Penal Code.

5. Shri Jamdar, the learned Counsel appearing for the Applicants apart from other submissions on merit, claimed parity on the basis of the Judgment and Order dated 10th February 2005 passed by this Court in the case of Dr. Arunkumar who is accused No.19. On merits he submitted that even going by the prosecution story, the role of the Applicants commenced only after commission of offence punishable under Sections 376 and 302 of the Code was completed and all the offences which are specifically alleged against the Applicants are bailable offences. He submitted that there is no material against the Applicants. He submitted that the conclusion of the trial will take a long time and therefore it will be unjust to detain the Applicants for a long time. The learned Counsel for the Respondents opposed the Application.

6. While dealing with the first submission of Shri Jamdar regarding parity, it must be noted that the allegations against the Accused No.19 are totally different. The allegation is that he perfunctorily performed Post-Mortem examinations on dead bodies with the object of saving the other accused. Perusal of the order passed by this Court

dated 10th February 2002 shows that the wife of the accused No.19 who has been arraigned as accused No.20-Dr.Sangeeta Prasad is mentally affected. There are two children to be looked after by the said accused. This Court observed that there was no possibility of the said Applicant tampering with the evidence.

7. The Applicants in the present case are Police Officers. There are serious allegations against the Applicants regarding destruction of important evidence. Considering the role allegedly played by the Applicants and the role allegedly played by the Accused No.19, this is surely not a case where the Applicants are entitled to claim parity. I, therefore, find no fault with the view taken by the learned Special Judge by which he rejected the case made out on the basis of parity.

8. Considering the gravity of the offence allegedly committed by the Applicants who are the Police Officers and considering the fact that allegation against them is of destruction of important evidence, I find it very difficult to differ from the view taken by the learned Special Judge regarding existence of apprehension of the Applicants tampering with the prosecution evidence. As the trial is pending, I am not referring to the material against the Applicants. Suffice it to say that the allegation against the Applicants is that they are responsible for disappearance of vital evidence in a brutal crime against humanity. According to prosecution, the

Applicants have done it as a result of their involvement in larger conspiracy to commit offences under sections 302 and 376 of the Code. It is not necessary to reiterate the magnitude and gravity of offence.

9. In my view the learned Special Judge was right in observing that when evidence of important witnesses is to be recorded, considering the fact that the Applicants are Policemen, the evidence will have to be saved from tampering. There is no merit in the Application and the same is rejected.

JUDGE